IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 552 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMADBHAI KASAMBHAI GAMETI - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR PB KHANDHERIA for Applicant(s) : 1,
MR.A.J. DESAI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 06/09/2006

ORAL JUDGMENT

The matter was called out in the first round. Learned advocate Mr.P.B. Khandheria was not present. The matter was kept back.

Even in the second call, learned advocate Mr.Khanderia is not present.

2. Heard the learned Additional Public Prosecutor, Mr.Desai and perused Exh.70-Annexure 'A' at page 8 and the order passed by the learned Presiding Officer, 12th Fast Track Court, Gondal, Camp at Upleta dated 3rd August 2006.

3. The present Revision Application is filed challenging the order passed below Exh.70 in Sessions Case No.108 of 1998 on 3rd August 2006. It is referred to by the petitioner that it was pursuant to order passed by this Court in Criminal Revision Application No.961 of 2005 that the applicant was required to give/ file application-exh.70. The relevant part of the order reads as under:

> “3. So far as PW-6, Ex.18, Bharatbhai Maganbhai, PW-8, Ex.26, Maganbhai Ambabhai, PW-9, Exh.27-Head Constable Bhagwanji, PW-10, ex.33-PSI, M.J. Patel, PW-11, Ex.45-Police Jamadar Khokhar are concerned, the applicant,i.e. accused may prefer detail application stating out grounds as to why

> further cross examination of such witnesses is essential to the just decision of the case. If such application is preferred by the defence, the trial court shall first decide such application afresh. (emphasis supplied)
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> 4. So far as the witness, i.e. Mamlatdar, who has recorded dying declaration and has not been examined by the prosecution yet and if, not examined by the prosecution at all, the defence may prefer an application to examine the said witness under section 311 of the Code of criminal Procedure. If such application is preferred, the Court shall decide the same in accordance with law."

Relying upon the aforesaid observations, the application, exh.70 was preferred. Perused paras 5 to 8. No specific ground is made out for which the application is required to be filed. In fact, as is recorded in application, exh.57, the trial had reached the stage of recording statement under section 313 of the Code of Criminal Procedure and then arguments were to be heard. At that stage, the charge was found missing. Despite sincere efforts to find out the same, it could not be

traced. Therefore, by order dated 22nd November 2005 passed by the Presiding Officer, 13th Fast Track Court, Gondal, Camp at Upleta, Exh.57 was allowed, the charge was ordered to be re-framed.

In this background, the contents of paras 5 to 8 of the application, exh.70 are not the grounds which would have weighed with the learned Judge in passing order dated 3rd August 2006. The learned Judge has taken into consideration the contents of the application, the provisions of law, sections 216 and 311 of the Code of Criminal Procedure and thereafter by recording the reasons, exh.70 is rejected.

4. This Court is in agreement with the reasons given by the Court. That being so, the Court finds no reason to interfere with the order passed by the learned Judge. The Criminal Revision Application fails and is dismissed.

(RAVI R. TRIPATHI, J.)

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